IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4573 OF 1998

Ramsamooj Sahadev Mourya
since deceased through his L.Rs.
Smt. Mayadevi Ramsamooj Mourya & Ors. ...Petitioners.
Vs.
Ramcharan Jaykaran Yadav,
since deceased through his L.Rs.
Smt.Teeja Ramcharan Yadav & Ors. ...Respondents.
....
Mr. K.K. Malpathak for the Petitioners.
Ms.Gauri Godse for the Respondents.
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CORAM : DR.D.Y.CHANDRACHUD, J.

June 16, 2006.

ORAL JUDGMENT :

A suit for eviction instituted in 1983 was decreed by the Civil Judge, Junior Division, Thane on 15th December 1993. The order was upheld in appeal by the Joint District Judge, Thane on 31st July 1998. This petition was admitted on 1st September 1998. The petition now comes up for hearing.

2. The Respondent instituted a suit for eviction on 14th September 1983. The material averment in support of the case of the Respondent was that he as a lessee of a piece of land situated

at Ward No.11, Chandanwadi, Thane, had erected a structure, including a room, admeasuring 150 sq.ft. thereon. The original Defendant approached him in April 1981 and sought permission to occupy a room temporarily since the premises which he was to obtain were to take about a year for being ready for occupation. The Respondent accordingly granted permission to the original Defendant to occupy the room on a monthly compensation of Rs.40/-. The Respondent averred that the parties never intended to create a tenancy. Though the Defendant occupied the premises in May 1981, he remained in arrears of the compensation/rent payable, right from the inception. A notice dated 27th January 1983 was issued to the Defendant calling upon him to quit and vacate the premises and to pay the arrears of rent. There was an averment in the plaint that it was apprehended that the Defendant may claim tenancy rights and hence, the Plaintiff-Respondent treated him as a tenant and addressed a notice on that basis. A decree for possession was accordingly sought.

3. In the Written Statement filed by the original Defendant, the allegations in the plaint were denied. According to the Defendant, he had obtained the piece of land admeasuring 15' x

10' on lease from the Respondent in February 1981 for constructing a structure thereon for the purposes of his residence on a monthly rent of Rs.40/-. The contention of the Defendant was that he had in February 1981 constructed a permanent structure thereon by expending an amount of Rs.17,000/- towards the cost of construction. At the time of the execution of the lease, the Defendant claimed to have paid an amount of Rs.6,000/- by way of security deposit. The original Defendant to the suit denied the existence of any relationship of landlord and tenant between him and the Respondent in respect of the suit premises. Consequently, it was averred that it was not open to the original Plaintiff to claim any rent for the structure.

4. The plaint was amended to claim eviction additionally on the ground that the Petitioner had denied the title of the Respondent to the suit premises in that he claimed a title in himself. It was averred that there was a breach of the conditions of the tenancy. An additional Written Statement came to be filed by the original Defendant stating that it was his case that he was a tenant of the Respondent only in respect of the open plot and not in respect of the suit premises which consisted of a room. Then it

was also averred as follows :

> "This dispute regarding as to whether the defendant is the tenant in respect of the open plot or the suit premises i.e. the room, does not amount to denial of the title of the plaintiff."

5. Parties adduced evidence before the Trial Judge. The Trial Court decreed the suit holding that (i) The original Defendant was a tenant of the original Plaintiff; (ii) Despite the receipt of a demand which was sent by registered post, the receipt whereof was acknowledged, the Defendant had failed to pay the arrears of rent between May 1981 and July 1982; (iii) The Defendant admitted during his cross-examination that he had no documentary evidence to show that he was the owner of the suit premises or that he had expended any money for the purposes of the construction; and (iv) A decree for eviction was liable to be passed on the ground of arrears and on the ground that the Defendant had denied the title of the landlord. The Trial Judge, it may be noted, also entered a finding that the status of the original Defendant was that of a protected tenant under Section 15A of the Rent Act. As noted earlier, the decree for eviction came to be passed on the ground of arrears and on the ground that there was

a denial of title by the tenant of the landlord.

6. An appeal was filed against the judgment of the Trial Court by the Defendant. The Respondent filed a cross objection in the appeal for challenging the finding of the Trial Judge to the extent that the Trial Court had held that the Defendant had acquired the status of a protected tenant under Section 15A of the Rent Act. The Petitioner moved an application before the Appellate Court for adducing additional evidence. In part 2 of the application, the Petitioner submitted that the suit was originally for possession on the ground of arrears. The Petitioner sought to set up a case that he had remitted the rent by Money Orders which were refused by the Respondent. It was submitted that the Money Order coupons remained to be produced through oversight. In sum and substance, therefore, the contention of the Petitioner was that though the suit for possession was on the ground of arrears of rent, the Petitioner was not in arrears since the rent had been remitted to the landlord.

7. The Joint District Judge, Thane, dismissed the appeal by his Judgment and Order dated 31st July 1998. At the very

threshold, in the reasons which were indicated by the Appellate Court, it has been noted that it was true that the Petitioner herein, has made out a case to the effect that he was in the occupation of the suit premises in the capacity of a tenant. The District Judge noted that apart from this, the Petitioner claimed to have sent the rent with respect to the suit premises to the landlord. The Appellate Court, however, entered a finding that the Money Order coupons produced by the Petitioner appear to be fabricated. Though the Money Order coupons bore an endorsement of refusal, the endorsement itself bore no signature of the postman from whom the landlord refused to accept Money Orders in question. Moreover, there was no cogent explanation forthcoming on the part of the Petitioner as to why those documents were not produced at the trial of the suit. That being the position, the order of eviction was affirmed.

8. Both the Plaintiff and the Defendant expired during the pendency of the proceedings. Their legal heirs have been brought on record.

9. On behalf of the tenant, it has been submitted that (i)

The Appellate Court had abdicated its duty to consider the evidence on record and to evaluate the findings of fact of the Trial Court; (ii) The contention of the landlord was that the tenant was a licensee and, the plea of tenancy which was urged without prejudice to the contention that only a licence had been created could not be sustained since both those pleas were mutually destructive; (iii) Once it is held that the Respondent has accepted the Petitioner as his licencee, the rent Court has no jurisdiction to entertain and try the suit; (iv) The Trial Court erred in holding that the Petitioner was a deemed tenant under Section 15A of the Rent Act inasmuch as the licence was created only in May 1981; and (v) That there was no denial of title on the part of the Petitioner.

10. In considering these submissions, it must be noted at the outset that the landlord came before the Court with the plea that the original Defendant was inducted into the premises temporarily on a monthly compensation of Rs.40/- since the premises which the Defendant had agreed to obtain elsewhere were not ready for occupation. The plaint proceeded on the basis that the parties did not intend to create a tenancy in respect of the room and the initial

induction was on a leave and licence basis. Nonetheless the landlord stated that he accepted the occupant as a tenant and sought a decree for eviction on the ground that the tenant had remained in arrears of rent right since the inception. The Defendant set up a case that he held a leasehold interest in the land and that the monthly rent of Rs.40/- that was agreed as compensation was the ground rent for the land. The contention of the Defendant was that he had expended an amount of Rs.17,000/- for construction of superstructure and that he was the owner of the superstructure. In view of this defence, the landlord amended the plaint to plead an additional ground of eviction, namely, the denial of title by the Defendant of the landlord. In the additional Written Statement that the Petitioner filed, he denied having controverted the title of the landlord and on the contrary it is material to note that he averred that the dispute related to whether he was a tenant in respect of an open plot or of the room. This dispute, according to the Petitioner, did not amount to a denial of title. In the course of his cross-examination, however, the Defendant made the following categorical admission:

> "I have no any documentary evidence to show that I am owner of suit premises. There is no documentary evidence to show that I had taken land on ground rent.

> For the purpose of construction I had purchased cement, bricks and other building materials but I have not filed the bills about purchase of building materials on record."

In the face of these clear admissions, the Trial Judge was justified in coming to the conclusion that the Petitioner had failed to establish his defence that he held a leasehold interest confined to the land and that he was the owner of the superstructure. Now, when the matter was carried in appeal before the District Judge, the Petitioner sought to adduce additional evidence in support of the application. For doing so, it was averred that the suit for eviction as originally instituted was only on the ground of arrears of rent. The Petitioner contended that in fact, he was not in arrears of rent as claimed in the notice; that he had remitted the rent by Money Orders which were refused by the landlord and that the Money Order coupons remained to be produced at the trial through oversight. The District Judge, in the course of his judgment made the following observations in regard to the case set up by the Petitioner before him:

> "It is true that the appellant-defendant has made out a case to the effect that he is in occupation of the suit premises in the capacity as a tenant. Not only this, but he had sent rent with respect to the suit premises to the landlord-respondent."

This observation is reflective of the position which the Petitioner adopted before the District Court in appeal. That is also borne out by the fact that the Petitioner sought to produce additional evidence in the appeal in support of his contention that he was not in arrears of rent by virtue of the alleged remittance of rent through Money Orders which according to the tenant, had been refused. There is no ground in the Writ Petition to the effect that the recording by the District Judge of the case of the Petitioner in para 8 of the judgment is incorrect. That being the position, it is clearly impermissible now for the Petitioner to challenge the maintainability of the suit on the ground that he is not a tenant in respect of the premises. First and foremost, as already noted above, the Petitioner came with a specific case that he held a leasehold interest in the land on a monthly ground rent of Rs.40/- while the superstructure thereon was constructed by him and was of his ownership. The Petitioner failed to establish the case that he was the owner of the superstructure on the basis of any cogent documentary evidence. The defence was, therefore, correctly rejected by the Trial Judge. Secondly, as the averment of the Petitioner in para 3 of the additional Written Statement would

show, the Petitioner correctly understood the parameters of the dispute: the dispute was whether the Petitioner was a tenant in respect of the open plot of land as he sought to establish or of the suit premises consisting of the superstructure constructed thereon. Thirdly, even before the District Judge, in appeal, the case of the landlord was understood to be that a ground for eviction has been made out on the basis that the tenant was a defaulter in paying the arrears of rent. In fact, the Petitioner sought to produce additional evidence on the footing that the arrears of rent had been remitted. In these circumstances, it is impossible to accede to the submission of the Petitioner that the suit must fail for want of relationship of a landlord and tenant. The plaint may not be artistically worded, but the gist of the case of the landlord is clear. The contention of the landlord was that the Defendant was initially inducted, for a temporary period. The Defendant failed to vacate or to pay the arrears due and payable. The landlord accepted the occupant as a tenant and on that basis filed the suit for eviction on the ground that there were arrears in the payment of rent. Parties went to trial clearly on notice that a decree for eviction was sought on the basis that the Petitioner being a tenant was in default in the payment of rent and had denied the title of the

landlord to the premises.

11. In so far as the submission that the District Judge has not evaluated the facts of the case is concerned, there is absolutely no merit therein. Before the District Judge, the Petitioner sought to justify his defence on the ground that the rent had been despatched by Money Order. The District Judge was, in my view, entirely justified in holding that there was no cogent explanation offered for the reason why the Money Order coupons had not seen the light of the day during the course of the trial. These were in the custody of the Defendant all along and to say that they remained to be produced through oversight was clearly not believable. That apart, the District Judge entered a finding of fact that the alleged endorsement of refusal thereon bore no signature of the Postman. The inference that the Money Order coupons were not genuine was, therefore, an inference which was validly drawn by the District Judge on the basis of the surrounding circumstances including the conduct of the Petitioner. Once the defence that the rent had been paid is unacceptable as was correctly held by the District Judge, a decree for eviction on the ground of arrears has to flow as a matter of course. The Trial

Judge has noted the admission of the Petitioner during the course of cross-examination that the statement in the Written Statement to the effect that the rent has been paid until August 1982 was erroneous. In the course of his cross-examination, the Petitioner made the following admission:

> It is wrongly mentioned in my Written Statement in para 5 that I had paid the ground rent to the Plaintiff of Rs.40/- p.m. till August 1982".

The finding of the Trial Judge that there were arrears between May 1981 and July 1982 was based on the record. There is no infirmity in the finding or in the confirming judgment of the Appellate Court. Similarly, both the Courts below were justified in holding that in setting up a case that the Petitioner was the owner of the superstructure there was a denial of title on the part of the tenant of the landlord. In fact, even the Written Statement would *ex-facie* show that it was the case of the Petitioner, that there was no relationship of a landlord and tenant in respect of the superstructure and the superstructure was of the ownership of the Petitioners.

12. In the course of the judgment, the Trial Judge stated that the Petitioner had attained the status of a protected tenant under

Section 15A of the Rent Act. That observation was unnecessary for the purposes of the discussion or the eventual finding thereon. The landlord had, the Court is informed, preferred a cross objection before the District Judge and it is, to my mind, necessary for this Court to observe that the finding in regard to the existence of a deemed tenancy under Section 15A is unwarranted. Inasmuch as the occupancy of the tenant commenced in May 1981, there was no question of the conferment of deemed tenancy. There was, however, sufficient material on the record to establish the tenancy of the Petitioner. The dispute between the parties was as to whether the extent of the interest of the Defendant related to a leasehold interest of the land or a tenancy in the structure thereon. The finding of tenancy is also corroborated by the evidence of P.W. 2, Ramchandra Laxman Dighe who produced the assessment record of the Municipal Corporation.

13. In conclusion, therefore, there is no merit in the submission of the Petitioner that the case has not been correctly evaluated by the District Judge or that there is no evaluation at all. Having negatived the defence of the Petitioner that he had paid rent and that there were no arrears, the District Judge was justified

in confirming the decree for eviction. For the reasons which have already been noted earlier, it is impossible to accede to the contention that the tenant had adopted a mutually destructive plea or that the Civil Judge, Junior Division has no jurisdiction to dispose of the suit. Once it is held that the Petitioner was indeed a tenant of the suit premises, the Trial Court has jurisdiction to entertain and try the suit. The suit was maintainable. The findings that have been recorded by the Courts below do not suffer from any error. There is no merit in the petition. The petition shall accordingly stand dismissed.

14. On the request of the Counsel appearing on behalf of the Petitioner, the decree shall not executed for a period of six weeks, subject to the filing of the usual undertaking within a period of two weeks from today.

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